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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,187	10/25/2005	Eduardo Anitua Aldecoa	ANTTUA4	6873
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EXAMINER				
EIDE, HEIDI MARIE				
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3732				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,187

Applicant(s)

ANITUA ALDECOA, EDUARDO

Examiner

HEIDI M. EIDE

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the quadrangular section of the starter drill must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 20, that applicant has claimed a rotary osteotome and further positively tries to claims a drive connector in combination with the rotary osteotome. Applicant is improperly trying to claim the combination of the rotary osteotome and drive connector. The applicant should clarify what subject matter the claim is drawn to, i.e. either the sub-combination of the osteotome or the combination of the osteotome and the drive connector. Further in claim 22, the applicant has claimed a started drill for use in combination with osteotomes, but does not positively claim the osteotomes. Further in the claim, the applicant claims the starter drill in combination with the osteotomes. Applicant is improperly trying to claim the combination of the starter drill and osteotomes. The applicant should clarify what subject matter the claim is drawn to, i.e. either the sub-combination of the starter drill or the combination of the osteotome and the starter drill. The examiner is considering the claims to be combination claims. Applicant should amend the claims accordingly.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Danger (6,179,616) in view of Lazzara et al. (6,290,499) in view of Misch et al 6,068,480 (Misch) further in view of Hollander et al. 6,319,005 (Hollander). Lorenzi discloses a kit of motor-driven instruments comprising osteotomes of progressive diameters (par. 29), the osteotomes having an apical end, threaded conical section and a threaded upper section, and an adjustment area (figure 1) in which connectors are engaged (par. 22), two drills of different diameters comprising ends for connection to a surgical motor (figure 2, par. 29), and connector for coupling to a dental drill or surgical hand wrench (par 22, 33) and the kit comprises a starter drill having an end section that is smaller in section than the osteotomes and an end for engagement to a surgical motor (par. 31). Lorenzi does not specifically teach the starter drill having a quadrangular section end. Danger is cited to teach a dental drill comprising a quadrangular-section end. It would have been obvious to one of ordinary skill in the art to have the quadrangular shape of the section end on the dental drill in order to have additional cutting edges or portions in view of Lorenzi. The modified set of instruments shows the limitations as described above and Lorenzi discloses adjustment area comprising a polygonal-section projection; however, they do not show the cylindrical projection section. Lazzara teaches instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. It would have been obvious to one having ordinary skill in the art to further modify the adjustment area to have the section of Lazzara et al. in order to secure components of the instruments.

It would have been an obvious matter of choice to one of ordinary skill in the art to have a polygonal projection that is hexagonal instead of quadrilateral. The modified set of instruments shows the limitations as described above; however, they do not show the connector comprising a blind axial recess and the second connector having a different cross-sectional shape than the first connector. Misch teaches the connectors having different cross-sectional shapes as illustrated in fig. 4A the connector for a motor driven instrument and in fig. 5, a manual driven instrument. Misch teaches instrument for fixing dental implants comprising connector having an end comprising a blind axial recess with a polygonal section incorporating the o-ring seal (figure 5). It would have been obvious to one having ordinary skill in the art to further include the features of Misch in the set of instruments in order to connect the working part of the instrument to a driving part. The modified set of instruments shows the limitations as described above; however, they do not show the osteotome comprises a threaded cylindrical section. Hollander teaches a conical section followed by a cylindrical section (fig. 7, col. 3, ll. 61-66). It would have been obvious to one having ordinary skill in the art at the time of the invention to further include the features of Hollander as a matter of obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B).

3. Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi 2002/0094508 in view of Hollander et al. 6,319,005 (Hollander). Lorenzi teaches a rotary osteotome for widening of a dental implant site comprising an elongated body having an apical end followed by a threaded conical section and a threaded upper section, with the threaded upper section capped by an adjustment area in which a drive connector is configured to be engaged (par. 22, fig. 1). Lorenzi further teaches a kit including the osteotome as discussed above and a starter drill having an end for connection to a surgical motor (par. 31, fig. 2). Lorenzi teaches the invention as discussed above, however does not show the osteotome comprises a threaded cylindrical section. Hollander teaches a conical section followed by a cylindrical section (fig. 7, col. 3, ll. 61-66). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lorenzi in view of Hollander as a matter of obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B).

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Hollander as applied to claim 18 above, and further in view of Lazzara et al. (6,290,499). Lorenzi in view of Hollander teaches the invention as discussed above, however, does not teach the adjustment area having a polygonal section capped by a cylindrical projection section that includes a circular recess and an

O-ring seal housed in the recess, and the drive connector having a recess of the polygonal cross section complementary to the polygonal section projection of the adjustment area and the O-ring engageable with an insides surface of the recess of the drive connector. Lazzara teaches instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. It would have been obvious to one having ordinary skill in the art to modify Lorenzi in view of Hollander further in view of Lazzara in order to secure components of the instruments.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi 2002/0094508 in view of Danger (6,179,616). Lorenzi teaches a starter drill 24/25 capable of piercing the hardest outer layer of a bone during oral surgery before using one or more osteotomes for preparing a cavity for a dental implant, the start drill having a section end that is smaller in section than the osteotomes, and an end for engagement to a surgical motor (par. 31, 33). Lorenzi does not specifically teach the starting drill having a quadrangular section end. Danger is cited to teach a dental drill comprising a quadrangular-section end. It would have been obvious to one of ordinary skill in the art to have the quadrangular shape of the section end on the dental drill in order to have additional cutting edges or portions in view of Lorenzi.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is 571-270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Heidi Eide
Examiner
Art Unit 3732

/Heidi M Eide/
Examiner, Art Unit 3732

/John J Wilson/
Primary Examiner, Art Unit 3732

4/6/2009